1	Introduced by Representative Townsend of South Burlington
2	Referred to Committee on
3	Date:
4	Subject: Open Meeting Law; Public Records Act
5	Statement of purpose of bill as introduced: This bill proposes to:
6	(1) clarify and amend what activities constitute a "meeting" under the
7	Open Meeting Law;
8	(2) amend provisions related to fees that a public agency may charge in
9	connection with responding to a Public Records Act request;
10	(3) clarify and update provisions related to time periods for responding
11	to a Public Records Act request; and
12	(4) establish a position for an Open Government Ombudsman and
13	authorize the Ombudsman to investigate and adjudicate acts of public bodies
14	and public agencies alleged to violate the Open Meeting Law and the Public
15	Records Act and to carry out other activities related to these laws.
16	An act relating to the Open Meeting Law and the Public Records Act
17	It is hereby enacted by the General Assembly of the State of Vermont:
18	* * * Open Meeting Law * * *
19	Sec. 1. 1 V.S.A. § 310 is amended to read:
20	§ 310. DEFINITIONS

As used in this subchapter	•
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- (2)(A) "Meeting" means a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action. "Meeting" includes each communication within a series of communications of any kind, directly or through intermediaries, to discuss or take action on any business of the public body, even if the individual communication does not involve a quorum of the public body.
- (B) "Meeting" shall not mean written correspondence or an electronic communication, including e-mail, telephone, or teleconferencing, between members of a public body for the purpose of scheduling a meeting, organizing an agenda, or distributing materials to discuss at a meeting, provided that such a written correspondence or such an electronic communication that results in written or recorded information shall be available for inspection and copying under the Public Records Act as set forth in chapter 5, subchapter 3 of this title.
- (C) As long as a quorum of the members of a public body does not discuss the body's business or take action, "meeting" does not include a gathering of a quorum of the public body at:
- (i) a conference or meeting open to the public, or to which
 members of the public are invited, that involves a discussion of general or local

1	interest to the public or to the public bodies attending the conference or
2	meeting;
3	(ii) a duly warned meeting of another public body, including a
4	meeting of a committee of a public body;
5	(iii) a ceremonial, social, or community event; or
6	(iv) a virtual gathering on an electronic platform as long as the
7	platform is open and accessible to all members of the general public without
8	obstacles such as fees or special permissions.
9	(D) The list in subdivision (C) of this subdivision (2) is not intended
10	to be exhaustive, but instead is intended to provide examples of gatherings that
11	do not fall under the definition of "meeting."
12	(3) "Public body" means any board, council, or commission of the State
13	or one or more of its political subdivisions, any board, council, or commission
14	of any agency, authority, or instrumentality of the State or one or more of its
15	political subdivisions, or any committee of any of the foregoing boards,
16	councils, or commissions, except that "public body" does not include councils
17	or similar groups established by the Governor for the sole purpose of advising
18	the Governor with respect to policy.
19	* * *

1	* * * Public Records Act * * *
2	Sec. 2. 1 V.S.A. § 316 is amended to read:
3	§ 316. ACCESS TO PUBLIC RECORDS AND DOCUMENTS; CHARGES;
4	FORMAT OF RECORDS
5	* * *
6	(b) Unless otherwise provided by law, a public agency shall not charge or
7	collect a fee in response to a request to inspect a public record.
8	(c) If an individual requests a copy of a public record, a public agency may
9	charge and collect a fee as follows:
10	(1) Actual cost of providing copies. If copying equipment maintained
11	for use by a public agency is used by the agency to copy the public record or
12	document requested, the agency may charge and collect from the person
13	requesting the copy the actual cost of providing the copy. The agency may
14	also charge and collect from the person making the request, the costs
15	associated with mailing or transmitting the record by facsimile or other
16	electronic means. Nothing in this section shall exempt any person from paying
17	fees otherwise established by law for obtaining copies of public records or
18	documents, but if such fee is established for the copy, no additional costs or
19	fees shall be charged.
20	(e)(2) Staff time.

1	(A) Unless otherwise provided by law, in the following instances an
2	agency may also charge and collect the cost of staff time associated with
3	complying with a request for a copy of a public record:
4	(1)(i) to the extent that the time directly involved in complying with the
5	request exceeds 30 minutes, provided that an agency shall not charge or collect
6	a fee for staff time spent searching for a public record or otherwise include this
7	time when calculating fees;
8	(2)(ii) if the agency agrees to create a public record; or
9	(3)(iii) if the agency agrees to provide the public record in a nonstandard
10	format and the time directly involved in complying with the request exceeds 30
11	minutes.
12	(B) The agency may require that requests subject to staff time
13	charges under this subsection subdivision (2) be made in writing and that all
14	charges be paid, in whole or in part, prior to delivery of the copies. Upon
15	request, the agency shall provide an estimate of the charge.
16	(3) Fees otherwise provided by law. Nothing in this section shall
17	exempt any person from paying fees otherwise established by law for obtaining
18	copies of public records or documents, but if such fee is established for the
19	copy, no additional costs or fees shall be charged.
20	* * *

1	Sec. 3. 1 V.S.A. § 317 is amended to read:
2	§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND
3	DOCUMENTS
4	(a) As used in this subchapter:
5	(1) "Business day" means a day that a public agency is open to provide
6	services.
7	(2) "Public agency" or "agency" means any agency, board, department,
8	commission, committee, branch, instrumentality, or authority of the State or
9	any agency, board, committee, department, branch, instrumentality,
10	commission, or authority of any political subdivision of the State.
11	(b) As used in this subchapter, "public record" or "public document" means
12	any written or recorded information, regardless of physical form or
13	characteristics, which that is produced or acquired in the course of public
14	agency business. Individual salaries and benefits of and salary schedules
15	relating to elected or appointed officials and employees of public agencies
16	shall not be exempt from public inspection and copying.
17	* * *

1	Sec. 4. 1 V.S.A. § 318 is amended to read:
2	§ 318. PROCEDURE
3	(a)(1) As used in this section, "promptly" means immediately, with little or
4	no delay, and, unless otherwise provided in this section, not more than three
5	business days:
6	(A) from receipt of a request under this subchapter; or
7	(B) in the case of a reversal on appeal by a head of the agency
8	pursuant to subsection (c) of this section, from the date of the determination on
9	appeal.
10	(2) A custodian or head of the agency who fails to comply with the
11	applicable time limit provisions of this section shall be deemed to have denied
12	the request or the appeal upon the expiration of the time limit.
13	(b) Upon request, the custodian of a public record shall promptly produce
14	the record for inspection or a copy of the record, except that:
15	(1) If the record is in active use or in storage and therefore not available
16	for use at the time the person asks to examine it, the custodian shall so
17	promptly certify this fact in writing to the applicant and, in the certification, set
18	a date and hour within one calendar week of the request when the record will
19	be available for examination .
20	(2) If the custodian considers the record to be exempt from inspection
21	and copying under the provisions of this subchapter, the custodian shall

<u>promptly</u> so certify in writing. Such certification shall identify the records
withheld and the basis for the denial. A record shall be produced for
inspection or a certification shall be made that a record is exempt within three
business days of receipt of the request, unless otherwise provided in
subdivision (5) of this subsection. The certification shall:
(A) identify the records withheld;
(B) include the asserted statutory basis for denial and a brief
statement of the reasons and supporting facts for denial. The custodian
shall also;
(C) provide the names and titles or positions of each person
responsible for denial of the request; and
(D) notify the person of his or her right to appeal to the head of the
agency any adverse determination.
(3) If appealed to the head of the agency, the head of the agency shall
make a determination with respect to any appeal within five business days after
the receipt of such appeal. If an appeal of the denial of the request for records
is in whole or in part upheld, the agency shall notify the person making such
request of the provisions for judicial review of that determination under section
319 of this title. [Repealed.]

- (4) If a record does not exist, the custodian shall <u>promptly</u> certify in writing that the record does not exist under the name given to the custodian by the applicant or by any other name known to the custodian.
- (5) In unusual circumstances as herein specified, the time limits prescribed in this subsection section may be extended by written notice to the person making such the request setting forth the reasons for such the extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten business days from receipt of the request or, in the case of a reversal on appeal by a head of the agency pursuant to subsection (c) of this section, from the date of the determination on appeal. As used in this subdivision, "unusual circumstances" means to the extent reasonably necessary to the proper processing of the particular request:
- (A) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;
- (B) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which that are demanded in a single request; or
- (C) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the

1	determination of the request or among two or more components of the agency
2	having substantial subject matter interest therein, or with the Attorney General
3	(b) Any person making a request to any agency for records under
4	subsection (a) of this section shall be deemed to have exhausted the person's
5	administrative remedies with respect to each request if the agency fails to
6	comply within the applicable time limit provisions of this section. Upon any
7	determination by an agency to comply with a request for records, the records
8	shall be made available promptly to the person making such request. Any
9	notification of denial of any request for records under this section shall set
10	forth the names and titles or positions of each person responsible for the denial
11	of such request.
12	(c)(1) Any denial of access by the custodian of a public record may be
13	appealed to the head of the agency. The head of the agency shall make a
14	written determination on an appeal within five business days after the receipt
15	of the appeal.
16	(2) A If the head of the agency upholds the denial of a request for
17	records, in whole or in part, the written determination shall include:
18	(A) the asserted statutory basis for <u>upholding the</u> denial and ;
19	(B) a brief statement of the reasons and supporting facts for
20	upholding the denial; and

1	(C) notification of the provisions for judicial review of the
2	determination under section 319 of this title.
3	(2)(3) If the head of the agency reverses the denial of a request for
4	records, the records shall be promptly made available to the person making the
5	request. A failure by the agency to comply with any of the time limit
6	provisions of this section shall be deemed a final denial of the request for
7	records by the agency.
8	* * *
9	Sec. 5. 1 V.S.A. chapter 5, subchapter 4 is added to read:
10	Subchapter 4. Open Government Ombudsman
11	§ 325. ESTABLISHMENT OF POSITION; QUALIFICATIONS
12	(a) It is the intent of the General Assembly to establish an impartial and
13	independent Open Government Ombudsman to assist the public, public bodies
14	public agencies, and others with Open Meeting Law and Public Records Act
15	compliance pursuant to subchapters 2 and 3 of this chapter.
16	(b) There is created within the State Ethics Commission the position of
17	Open Government Ombudsman. The Ombudsman shall be appointed by and
18	serve at the pleasure of the State Ethics Commission. The Ombudsman is
19	empowered to investigate Public Records Act and Open Meeting Law
20	complaints, to adjudicate the acts of public bodies and public agencies alleged
21	to have violated the Open Meeting Law and the Public Records Act, and to

1	recommend appropriate changes in these laws in order to promote
2	accountability consistent with Chapter I, Article 6 of the Vermont Constitution.
3	(c) The Ombudsman shall be:
4	(1) an attorney licensed to practice law in Vermont;
5	(2) a person of recognized judgment, objectivity, and integrity; and
6	(3) a person who is qualified to analyze problems of law, administration,
7	and public policy.
8	(d) An individual serving as Ombudsman shall not:
9	(1) be actively involved in political party activities or publicly endorse,
10	solicit funds for, or make contributions to political parties or candidates for
11	elective office;
12	(2) be a candidate for or hold any other elective or appointive public
13	office; or
14	(3) engage in any other occupation, business, or profession likely to
15	detract from the performance of his or her duties as Ombudsman or to result in
16	a conflict of interest or an appearance of impropriety or partiality.
17	§ 326. DUTIES
18	The Open Government Ombudsman shall:
19	(1) As he or she deems necessary, provide information to the public,
20	public agencies, public bodies, and others regarding requirements of the Public
21	Records Act and of the Open Meeting Law.

1	(2) In his or her discretion, issue advisory opinions interpreting the
2	Open Meeting Law and the Public Records Act as may be needed to inform the
3	public, public agencies, public bodies, and others.
4	(3) Receive and investigate complaints on behalf of persons seeking
5	records under the Public Records Act or compliance with the Open Meeting
6	Law. The Ombudsman shall have authority to compel, by subpoena, the
7	attendance and testimony of witnesses and the production of books and
8	records, and 3 V.S.A. §§ 809a and 809b shall apply to all subpoenas issued
9	under this subdivision.
10	(4) Upon request, attempt to mediate disputes between a public body
11	and a person alleging an Open Meeting Law violation or between a public
12	agency and a person alleging an unlawful denial of records under the Public
13	Records Act.
14	(5)(A) For disputes under the Open Meeting Law, after the public body
15	has had the opportunity to respond under section 314 of this chapter, and for
16	disputes under the Public Records Act, following a determination on appeal by
17	the head of the public agency under section 318 of this chapter, if mediation
18	has been attempted under subdivision (4) of this section and is not successful,
19	the Ombudsman shall, upon request of all parties to the dispute, adjudicate
20	questions of compliance by issuing a binding written determination.

1	(B) Except as otherwise provided in this subdivision (5), the
2	contested case provisions of 3 V.S.A. §§ 809-815 shall apply to proceedings
3	under this subdivision (5).
4	(C) Within 30 days after the Ombudsman issues a written
5	determination under this subdivision (5), a party may appeal to the Superior
6	Court in Washington County, which shall review the matter de novo.
7	(D) A party to an Open Meeting Law or a Public Records Act dispute
8	is entitled to refuse to participate in mediation under subdivision (4) of this
9	section and to refuse to submit to an adjudication under this subdivision (5).
10	(6) Establish policies and procedures for receiving, investigating,
11	mediating, and adjudicating Open Meeting Law and Public Records Act
12	complaints and disputes.
13	(7) Develop and implement a reporting system to collect and analyze
14	information relating to complaints.
15	(8) On or before January 15 of each year, submit to the House and
16	Senate Committees on Government Operations a report on the work performed
17	by the Ombudsman during the previous calendar year.
18	Sec. 6. CREATION OF OPEN GOVERNMENT OMBUDSMAN POSITION
19	One part-time exempt Open Government Ombudsman position is created as
20	set forth in Sec. 5 of this act by using an existing position in the position pool.

1	Sec. 7. OPEN GOVERNMENT OMBUDSMAN FUNDING SOURCE
2	(a) Surcharge.
3	(1) In addition to the surcharge authorized under 2017 Acts and
4	Resolves No. 79, Sec. 13, and notwithstanding the provisions of 3 V.S.A.
5	§ 2283(c) setting forth the purpose and rate of charges collected in the Human
6	Resource Services Internal Service Fund, in fiscal year 2019 and thereafter, a
7	surcharge of up to [##] percent, but not greater than the cost of the activities of
8	the Open Government Ombudsman authorized in Sec. 5 of this act, on the per-
9	position portion of the charges authorized in 3 V.S.A. § 2283(c)(2) shall be
10	assessed to all Executive Branch agencies, departments, and offices and shall
11	be paid by all assessed entities solely with State funds.
12	(2) The amount collected shall be accounted for within the Human
13	Resource Services Internal Service Fund and used solely for the purposes of
14	funding the activities of the Open Government Ombudsman authorized in
15	Sec. 5 of this act.
16	(b) Repeal. This section shall be repealed on June 30, 2020.
17	Sec. 8. 1 V.S.A. § 314(a) is amended to read:
18	(a) A person who is a member of a public body and who knowingly and
19	intentionally violates the provisions of this subchapter or a final determination
20	of the Open Government Ombudsman with respect to this subchapter, a person
21	who knowingly and intentionally violates the provisions of this subchapter on

1	behalf or at the behest of a public body, or a person who knowingly and
2	intentionally participates in the wrongful exclusion of any person or persons
3	from any meeting for which provision is herein made, shall be guilty of a
4	misdemeanor and shall be fined not more than \$500.00.
5	Sec. 9. 1 V.S.A. § 320(c) is amended to read:
6	(c) A person who willfully destroys, gives away, sells, discards, or
7	damages a public record without having authority to do so, or who violates a
8	final determination of the Open Government Ombudsman with respect to this
9	subchapter, shall be fined at least \$50.00 but not more than \$1,000.00 for each
10	offense.
11	* * * Effective Date * * *
12	Sec. 10. EFFECTIVE DATE
13	This act shall take effect on July 1, 2018.